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JUROR MISCONDUCT

It has become common following an adverse verdict for the losing party to research the litigation history of jurors in the hopes of showing juror misconduct which would justify a new trial. In a recent case, the Fourth District Court of Appeals had the opportunity to review the law on this subject and clarify the requirements for establishing juror misconduct.

The case of Taylor v. Magana, 30 Fla. L. Weekly D2343 (Fla. 4th DCA, Oct. 5, 2005) was a medical malpractice case which resulted in a verdict for the defendant doctor. The trial judge conducted the initial voir dire examination by utilizing a written questionnaire which specifically asked each of the jurors whether they or their immediate family had been a party to a lawsuit or whether a personal injury claim had ever been made against them or their family. One of the jurors responded in the negative to a series of questions which included the information requested concerning prior lawsuits or claims. After the verdict another juror gave that juror a ride home from the courthouse and discovered that not only had the juror and his mother been sued for a personal injury claim but that the juror believed that the attorney for the plaintiff in the case in which the jurors sat was representing the plaintiff in the suit against the juror and his mother. A review of the docket reflected that not only was the juror a defendant in a pending case but that the case was about to go to trial two weeks hence.

The trial court granted a motion to interview the juror and the juror claimed lack of understanding as his explanation for failing to disclose the requested information. The trial court in denying the motion for new trial relied, in part, on the finding that the plaintiff had failed to establish that the juror had purposely concealed the relevant information during voir dire. The Fourth District reversed relying principally on De La Rosa v. Zequeira, 659 So. 2d 239 (Fla. 1995). The De La Rosa Court established the three part test which applies to determine whether juror misconduct warrants a new trial:

First, the complaining party must establish that the information is relevant and material to jury service in the case. Second, that the juror concealed the information during questioning. Lastly, that the failure to disclose the information was not attributable to the complaining party's lack of diligence.

The District Court explained that the trial judge misapplied the law by basing her denial of the motion for new trial on the lack of evidence of purposeful concealment. At Page 2344, the District Court held:

It is clear that the trial judge applied the wrong standard in determining whether juror Hill's misconduct violated the second prong of *De La Rosa*, i.e., that the juror *concealed* the information which was relevant and material to his jury service. As we stated above, "a juror's nondisclosure need not be intentional to constitute concealment," because the impact remains the same, counsel is prevented from making an informed judgment regarding the composition of the jury and the utilization of his or her peremptory challenges. *Roberts*, 814 So. 2d at 343. It is clear that the trial judge mistakenly concluded that the concealment must be *purposeful* and

the application of this incorrect standard played a significant role in her conclusion not to grant a new trial.

The District Court in overturning the trial court warned trial counsel that it is not every misstatement of a juror which justifies a new trial. The Court emphasized that the questions posed to the juror must be in terms that would permit an average person, without legal training to be fully capable of understanding the information that is requested. Words such as “litigation” may be very clear to someone with three years of legal education but a total mystery to a layman. In this case, however, the Court pointed out that it was the trial judge who propounded the questions and that she did an admirable job of avoiding legalese so that the information requested could not have been clearer.

The District Court also warned that if a juror’s response about litigation history is ambiguous or ambivalent, it is counsel’s duty to inquire further. It is the responsibility of counsel to ask follow-up questions to clarify a juror’s answers or to obtain any additional information which is relevant to the question. See Birch v. Albert, 761 So. 2d 355, 358 (Fla. 3rd DCA 2000). In this case, however, the District Court pointed out that there was nothing to put counsel on notice that the juror did not understand what appeared to be clearly sought information. The Court was incredulous about the juror’s explanation of lack of understanding. The District Court ruled that the circumstances of this case fell within the requirements of Birch, supra, at 358 that the information was “squarely asked for and not provided.”

A party has a right to conduct a meaningful voir dire examination. Probably nothing in the trial is more important than the selection of jurors. The foundation of any verdict must be based upon a decision by a fair and impartial panel of people. The test enunciated by the Florida Supreme Court in De La Rosa, supra, is designed to ensure that the attorneys are not prevented from making an informed decision regarding the composition of the jury or the use of preemptory challenges. See Roberts v. Tejada, 814 So. 2d 334, 333 (Fla. 2002). Nevertheless, counsel must do their part in ensuring that the questions posed are clear and any ambiguity is resolved before a juror is accepted.

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